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IN THE

Supreme Court of the United States

October Term, 1943.

No. 738

ALBERT W. ISELIN AND LOUISE G. ISELIN,
Petitioners,

versus

ARNAUD LACOSTE,
Respondent.

PETITION OF ALBERT W. ISELIN AND LOUISE G. ISELIN, FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND SUPPORTING BRIEF.

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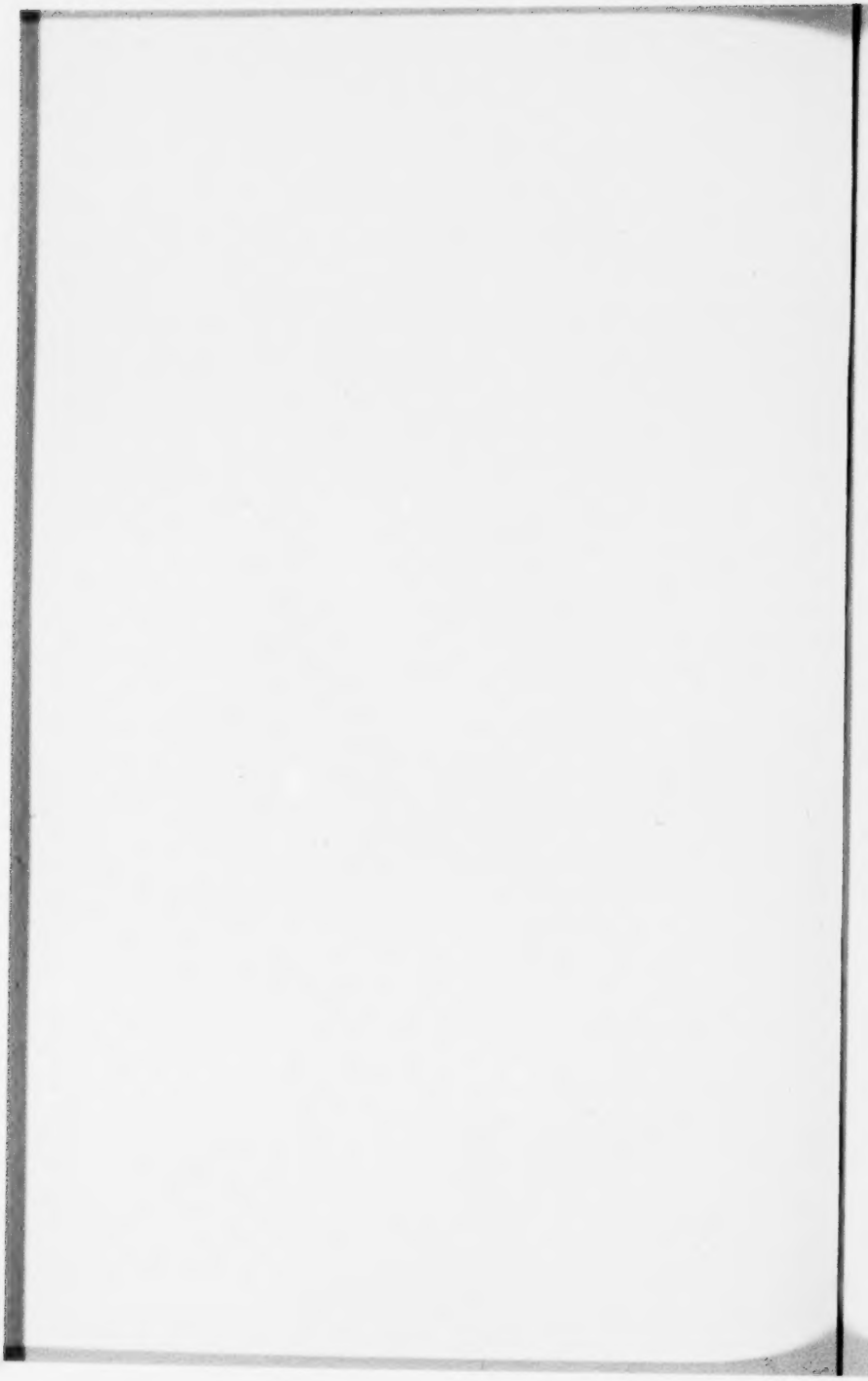

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioners pray that a writ of *certiorari* issue to review the decree of the United States Circuit Court of Appeals for the Fifth Circuit, entered on January 12, 1944, affirming the judgment of the United States District Court for the Western Division of the Southern District of Mississippi, entered on June 22, 1943.

I.

The Opinion of the United States Circuit Court of Appeals for the Fifth Circuit, filed on January 12, 1944, is not yet reported, but is found in the printed record beginning at page 151 *et seq.*

II.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This suit was instituted in the United States District Court for the Western Division of the Southern District of Mississippi by the filing of Plaintiffs' (Petitioners here) Petition for Declaratory Relief (R. P. 1 *et seq.*). The Petition for Declaratory Relief alleges that the Petitioners are residents and citizens of the State of Indiana; and that the Defendant (Respondent here) is a citizen and resident of the State of Louisiana; that the *situs* of the lands involved in this proceeding is in Warren County, Mississippi; that the value of the lands in controversy is greatly in excess of the jurisdictional amount of $3,000.00. It is there set forth that the fractional sections of land in controversy were originally in Madison Parish, Louisiana, and that the Petitioners purchased the lands in question on the 5th day of October, A. D. 1926 (R. P. 65 *et seq.*). They deraign their title from the United States Government, and Petitioners' claim is that by a perceptible caving and avulsion of the Mississippi River banks, and by the river deserting its original bed, by perceptible change and avulsion, all of the lands owned

in fee by these Petitioners were caused to be submerged, and to reappear first as an island formation on the west side of the thalweg or main channel of the river, and by a subsequent change in the main channel of the river to be shifted from the west to the east side of the main channel of the Mississippi River; and that as the river continued shifting southwestward away from the island, the accretions continued to rebuild and to reappear on the same identical area owned in fee by these Appellants; the land now involved in this controversy being wholly within the boundaries of the old Mississippi River on the north, west and south, and on the east by the 1932 Diamond Point Cut-off; that the Petitioners also claim said lands in fee by reason of same having been submerged and now rebuilt and reappeared land on the same identical area and are now subject to survey and identification; and the foregoing is precisely what Petitioners' proof would have been, had they been allowed, as they should have been, to have had a trial on the merits in the United States District Court.

Petitioners further charged that the Respondent here, Arnaud LaCoste was unlawully occupying and trespassing upon the lands owned by these Petitioners, and which form the basis of this action. Service of Process was had upon the Respondent, and after moving for additional time in which to answer, the Appellee filed his Answer (R. P. 84 *et seq.*) as well as a Motion to Dismiss (R. P. 131), alleging as a basis therefor that the Petition for Declaratory Relief stated no right or claim on which the District Court could give relief, as well as setting

forth that the Petitioners had, before the institution of this suit, sold the lands in question to the Mengel Company.

At the hearing had in the District Court on the Motion to Dismiss the Petition for Declaratory Relief the District Court sustained the Motion to Dismiss, as this Honorable Court will perceive from the Order (R. P. 133). From this Order sustaining the Motion to Dismiss, the Petitioners prosecuted their Appeal to the United States Circuit Court of Appeals for the Fifth Circuit. That Court affirmed the Order or Judgment of the District Court. A Petition for Rehearing was denied and this Petition for a writ of *certiorari* is now filed.

III.

BASIS OF JURISDICTION.

Jurisdiction is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938. (28 U. S. C. 347.)

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit was filed on January 12, 1944; petition for rehearing was filed on January 28, 1944; rehearing was denied on February 7, 1944, and an order staying the mandate for thirty days, pending the application for writ of *certiorari* in this Court was entered on February 10, 1944.

IV.

QUESTIONS PRESENTED.

Two questions are presented, as follows:

(1) Should not the Court have held and decreed that the Petition for Declaratory Relief set forth a claim on

which the United States District Court could and should, grant relief; and that the Court erred in sustaining the Motion to Dismiss.

(2) Should not the Court have held and decreed that a "metes and bounds" description governed, and that, therefore, the lands, the subject matter of this controversy were specifically excluded from the lands sold by Petitioners to the Mengel Company.

V.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

The United States Circuit Court of Appeals for the Fifth Circuit has herein decided a case involving important principles of law in the Federal Courts in direct conflict with the rules and decisions governing these principles, as enunciated by the United States Supreme Court, the several Circuit Courts of Appeals, and District Courts.

CONCLUSION.

Wherefore, Petitioners respectfully pray that this petition for a Writ of *Certiorari* to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered on January 12th, 1944, in the above entitled cause be granted.

L. BRYAN DABNEY,
Attorney for Petitioners.